

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

PROGRESSIVE PREFERRED )  
INSURANCE COMPANY, )  
                        )  
Plaintiff,             )  
                        )  
v.                      ) Civil Action Number: 3:06-CV-00934  
                        )  
JMP ENTERPRISES, INC.; )  
JOHN MARK PARKER; and )  
JENNIFER M. GOLDEN, )  
                        )  
Defendants.            )

**STATEMENT OF UNDISPUTED FACTS**

COMES NOW the plaintiff, Progressive Preferred Insurance Company (“Progressive”), pursuant to Rule 56 of the Federal Rules of Civil Procedure, and submits the following undisputed facts in support of its motion for summary judgment:

1. Jennifer Golden (“Golden”) is the plaintiff in an underlying state court case styled, Jennifer Golden v. Deer Valley Home Builders, Inc., et al., in the Circuit Court of Lee County, Alabama, civil action number: CV-2006-106. (See, Jennifer Golden’s complaint attached as exhibit “A”).
2. Golden filed a complaint against John Mark Parker (“Parker”) and JMP Enterprises, Inc. (“JMP”), as well as other defendants arising out of the purchase of a mobile home from Deer Valley Homebuilders on April 27, 2005. Id.

3. The complaint seeks damages against JMP and Parker in counts XII for negligent delivery and installation of a mobile home. Id. at p.8, ¶59-61. It seeks damages in count XIII for wanton delivery and installation of the mobile home. Id. at p.8, ¶62-67. It seeks damages in count XIV for breach of implied warranty that the home would not be damaged during delivery and installation. Id. at p.9, ¶68-72. It seeks damages in count XV for fraudulent failure to disclose that JMP and Parker were not properly licensed to install mobile homes. Id. at p.9, ¶73-78.

4. Progressive issued a policy of commercial automobile insurance to JMP. The policy number was 08263817-0. The policy was in effect from August 1, 2004 to August 1, 2005. (See, Progressive's policy attached as exhibit "B").

5. The policy provided coverage for compensatory damages which JMP and Parker were liable because of an "accident". (Progressive's policy, page 5, ¶8).

6. The term "accident" is defined in definition 8 as:

**accident** means a sudden, unexpected and unattended event, or a continuous or repeated exposure to that event, that causes **bodily injury or property damage** and arises out of the ownership maintenance, or use of **your insured auto**.

Id.

7. The term "your insured auto" is defined in definition 9 to include any auto described on the declarations page. Id. at p.5, ¶9.

8. The policy excluded coverage in exclusion 1 for expected or intended damages. (Progressive's policy, p.11). It also excluded coverage in exclusion 9 for property damage to any property being transported or in the charge of the insured. (Progressive's policy, p. 13). It excluded coverage in exclusion 10 for property damage caused by the loading or unloading of the property. Id.

9. Progressive's policy also excluded contractual liability in exclusion 2 of its policy. (Progressive's policy, p.11).

10. Progressive's policy also requires the insured to notify it "as soon as practicable". "All accidents or losses should be reported even if the insured person is not at fault." (Progressive's policy, p.1). Additionally, Progressive's policy requires that the insured promptly send it any and all legal papers received relating to any claim or lawsuit. (Progressive's policy, p.2).

11. Progressive's policy also excludes punitive damages. Progressive's policy states as follows:

PART - 1 - LIABILITY TO OTHERS

\* \* \*

We will pay damages, **OTHER THAN PUNITIVE** or exemplary damages, for which an **insured** is legally liable because of an **accident**.

(Progressive's policy, p. 9).

/s/ R. Larry Bradford

R. Larry Bradford, Attorney for Plaintiff,  
Progressive Preferred Insurance Company  
Attorney Bar Code: BRA039

/s/ Shane T. Sears

Shane T. Sears, Attorney for Plaintiff,  
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OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this the 15<sup>th</sup> day of June, 2007, served a copy of the foregoing on all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

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/s/ Shane T. Sears

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OF COUNSEL